

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

EXERGEN CORPORATION,

Plaintiff,

v.

WAL-MART STORES, INC., S.A.A.T.  
SYSTEMS APPLICATION OF ADVANCED  
TECHNOLOGY LTD., DAIWA PRODUCTS,  
INC. and HANA MICROELECTRONICS CO.,  
LTD.,

Defendants.

Civil Action No. 01-CV-11306-RCL

Civil Action No. 02-CV-10436-RCL

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**CONSENT JUDGMENT**

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Plaintiff Exergen Corporation ("Exergen") and defendant CVS Corporation ("CVS")  
hereby stipulate and consent to judgment as follows:

WHEREAS, Exergen and CVS, named parties in the above consolidated action have entered into a separate Settlement Agreement in which they have compromised and settled all of their disputes in this Action; and

WHEREAS, CVS has dismissed with prejudice its appeal of this Court's judgments and rulings; and

WHEREAS, the parties' have agreed to entry of a Consent Judgment in the present form and do hereby stipulate and agree that Final Judgment be entered as between Exergen and CVS in this Action; and

WHEREAS, pursuant to Fed.R.Civ.P. 54(b), there is no just reason for delay in entering judgment as between Exergen and CVS;

NOW, THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that:

1. This Court has jurisdiction of the subject matter of this action for patent infringement pursuant to Title 28, U.S.C., Sections 1331 and 1338, and jurisdiction over the parties to this action;

2. Exergen is the owner of the following patents ("the Exergen patents") related to infrared thermometry devices:

U.S. Patent No. 5,012,813, entitled RADIATION DETECTOR HAVING IMPROVED ACCURACY ("the '813 patent");

U.S. Patent No. 6,047,205, entitled RADIATION DETECTOR PROBE ("the '205 patent"); and

U.S. Patent No. 6,292,685, entitled TEMPORAL ARTERY TEMPERATURE DETECTOR ("the '685 patent").

3. The '813, '205 and '685 patents in suit are not invalid on the record developed at trial in this Action.

4. CVS has offered for sale and sold in the United States infrared thermometers designated "CVS Forehead Thermometer," which infringe claim 1 of the '813 patent, claims 1, and 3-5 of the '205 patent, and claims 1 and 27-30 of the '685 patent.

5. Exergen has waived its claims against CVS in this Action for treble damages and attorneys' fees.

6. The money judgment entered against CVS on August 4, 2005, is satisfied.

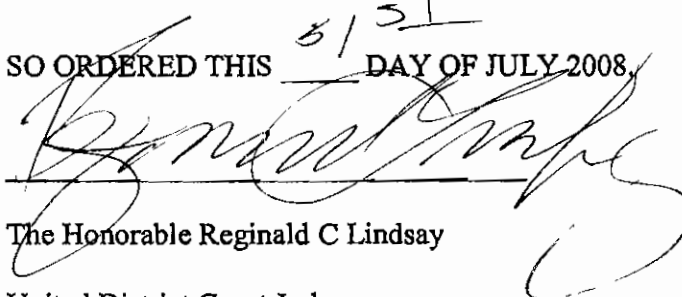
7. Exergen and CVS will bear their own costs and attorneys fees of the Action.

8. No other or further relief is granted to any party.

9. The parties hereto waive all right to appeal from, or obtain review of, this Consent Judgment.

10. The Clerk is directed to enter this Consent Judgment forthwith.

SO ORDERED THIS 8/31 DAY OF JULY 2008.

  
The Honorable Reginald C Lindsay  
United District Court Judge

ASSENTED TO:

EXERGEN CORPORATION

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